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lands to trustees in fee to the use of successive tenants in tail with ultimate remainder to the use of the settlor and his heirs. One of the tenants in tail, while in the enjoyment of the rent charge, executed a valid disentailing assurance. *Held*, that the tenant acquired an equitable fee simple in the rent charge. *In re Frank's Estate*, [1915] 1 Ir. 387 (Ct. of Appeal).

Two tenants in tail of equitable rent charges, which had been granted to them *de novo* without remainders over, executed a disentailing deed. *Held*, that the deed created merely a base fee in each rent charge determinable on the failure of the issue in tail. *Pinkerton* v. *Pratt*, [1915] 1 Ir. 406 (Ct. of Appeal).

A rent charge may be entailed like any other tenement. *Smith* v. *Farnaby*, Carter 52; *Drew* v. *Barry*, I. R. 8 Eq. 260, 283. See CHALLIS, REAL PROPERTY, 299. And, like any other tenant in tail, a tenant in tail of a rent charge can bar the succeeding estates thereof. *Smith* v. *Farnaby*, *supra*; *Anonymous*, 12 Mod. 513. Similarly an equitable remainder may be barred just as though the estates were legal. *Brydges* v. *Brydges*, 3 Ves. Jr. 120; *Boteler* v. *Allington*, 1 Bro. C. C. 72. See *Salvin* v. *Thornton*, Ambler 545, 549. It is said that an equitable tenant in tail cannot cut off a legal fee. *Brydges* v. *Brydges*, *supra*. However, such a tenant can bar the equitable remainder though it is vested in the person with the legal fee. *Robinson* v. *Cuming*, 1 Atk. 473. This has been explained by saying that the court will not allow a merger since that would prevent the barring of the equitable remainder. See LEWIN, TRUSTS, 12 ed., 12. Since this means simply that the equitable remainder can be barred regardless of merger, the analogy of equitable estates gives but feeble support for the distinction made by the court in the principal cases. However, the fact that an estate of rent charge is created only by the parties, whereas equitable estates are frequently raised by the courts, may indicate that every legal estate does not contain an incipient estate of the former sort though it does of the latter. And the text-writers and some *dicta* support the principal cases. *Chaplin* v. *Chaplin*, 3 P. Wm. 229, 230. See 2 JARMAN, WILLS, 6 ed., 1153; THEOBALD, WILLS, 7 ed., 500; CHALLIS, REAL PROPERTY, 2 ed., 299.

RES JUDICATA — PERSONS CONCLUDED — PERSONS ASSISTING IN THE DEFENSE. — One hundred underwriters insured a yacht by identical policies under which each was severally but not jointly liable for his proportionate share. The yacht was destroyed. In an action by the owner against one of the underwriters the defense was conducted under the direction and at the expense of all. On judgment being given against him, the owner now sues another of the underwriters. *Held*, that the matter is not *res judicata*. *Fish* v. *Vanderlip*, 156 N. Y. Supp. 38 (Sup. Ct.).

A judgment is conclusive only as between parties or persons in privity with parties. *Litchfield* v. *Goodnow's Administrator*, 123 U. S. 549; *Yorks* v. *Steele*, 50 Barb. (N. Y.) 397. See 2 BLACK, JUDGMENTS, 2 ed., §§ 534, 600. But a party, in this sense, need not be a party of record. Thus a person not nominally a party may subject himself to be concluded by openly and actively assuming the conduct of the defense of an action in which he is interested. *Castle* v. *Noyes*, 14 N. Y. 329; *Frank* v. *Wedderin*, 68 Fed. 818; *Empire State Nail Co.* v. *American Solid Leather Button Co.*, 71 Fed. 588. But the matter will not be made *res judicata* by such participation when, as in the principal case, the person assisting in the defense does so, not because of some direct interest of his own in the subject matter of the particular action or because of some responsibility to the defendant depending upon the decision, but merely because he has similar though entirely separate rights against the plaintiff. *Litchfield* v. *Goodnow's Administrator*, *supra*; *Rumford Chemical Works* v. *Hygienic Chemical Co.*, 215 U. S. 156. See *Schroeder* v. *Lahrman*, 26 Minn.

87, 89, 1 N. W. 801, 802. *Contra, Greenwich Insurance Co.* v. *Friedman Co.*, 142 Fed. 944. True, if such persons agree with the plaintiff to make it a test case, the judgment will bind them. *Penfield* v. *Potts*, 126 Fed. 475, 479. Then they are concluded not so much by the judgment as by their agreement to abide by the result. But when, as in the principal case, there is no such agreement there will be no estoppel by judgment. *Merchants' Coal Co.* v. *Fairmont Coal Co.*, 160 Fed. 769, 777.

RESTRAINT ON ALIENATION — SPENDTHRIFT TRUST — WHETHER AN ABSOLUTE EQUITABLE INTEREST PASSES TO ASSIGNEES IN BANKRUPTCY. — The testator devised property to trustees to pay the income to his son for life and thereafter to his son's children until the oldest reached forty, when the property was to be divided equally among them. A further provision directed that all payments of principal and income should be made directly to the beneficiaries, free of assignments and creditors' attachments. The ultimate distribution of the fund has now been made except to one beneficiary who has become bankrupt. His assignee in bankruptcy claims his portion. *Held*, that the bankrupt takes the share free from his assignee's claim. *Boston Safe Deposit and Trust Co.* v. *Collier*, 111 N. E. 163 (Mass.).

It is widely held in this country that the right to receive the income of a trust fund for life may be made inalienable. *Broadway National Bank* v. *Adams*, 133 Mass. 170; *Smith* v. *Towers*, 69 Md. 77, 14 Atl. 497; *Leigh* v. *Harrison*, 69 Miss. 923, 11 So. 604. See GRAY, RESTRAINTS ON ALIENATION, 2 ed., § 178. Consequently such interests cannot be reached by creditors and do not pass to an assignee in bankruptcy. *Munroe* v. *Dewey*, 176 Mass. 184, 57 N. E. 340. Moreover, in a few jurisdictions, and notably in Massachusetts, the courts have given effect to a testator's direction to withhold a legacy from the beneficiary for a designated period. *Claflin* v. *Claflin*, 149 Mass. 19; *Lunt* v. *Lunt*, 108 Ill. 307; *Stier* v. *Nashville Trust Co.*, 158 Fed. 601. But here the absolute equitable interest is alienable and accessible to creditors. See GRAY, *supra*, § 124 l-n. By the doctrine of the principal case, not only is the postponement valid, but meanwhile, until the trust is terminated and the property actually given to the beneficiary in fee, his absolute equitable interest is inalienable. This decision contravenes the great weight of authority. *Smith* v. *Moore*, 37 Ala. 327; *Turley* v. *Massengill*, 7 Lea (Tenn.) 353; *Gray* v. *Obear*, 54 Ga. 231. *Contra, Beck's Estate*, 133 Pa. St. 51, 19 Atl. 302; *Weller* v. *Noffsinger*, 57 Neb. 455, 77 N. W. 1075. In Massachusetts only two *dicta* support it. *Lathrop* v. *Merrill*, 207 Mass. 6, 9; *Braman* v. *Stiles*, 2 Pick. 460, 464. Besides lacking authoritative basis the decision works gross injustice, for after the bankrupt's discharge from his debts, he can call for a conveyance to himself of the property, which his creditors cannot then reach. See *Re Bandonine*, 96 Fed. 536, 539. Only a difference of degree, it may be urged, exists between permitting restrictions on a life income and on the principal itself; the debtor is simply allowed to enjoy more property at the expense of his creditors. Exactly this is the evil to be avoided in applying an anomaly supportable only on the policy of aiding a donor to protect his beneficiary from prodigality. See G. Clark, "Spendthrift Trusts," 9 BENCH & BAR, n. s. 6, 59, 106.

SUNDAY LAWS — NECESSITY — SUNDAY NEWSPAPER ADVERTISING. — A newspaper company sues for the contract price of advertisements inserted in both week day and Sunday issues. The usual statutory provision against Sunday labor except for purposes of necessity or charity was in force. *Held*, that the company may recover the contract price, since Sunday newspapers are a necessity. *Pulitzer Pub. Co.* v. *McNichols*, 181 S. W. 1 (Mo.).

"Necessity," in Sunday laws, means whatever is necessary for reasonable